

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.772 of 1993

Sankara Narayanan .. Appellant

-vs-

1. Padmanabha Iyer (died)
2. Syed Rowther
3. Perumal Ammal
4. P.Thangammal
5. Parameshwaran
6. P.Subramanian
7. P.Harikaran
8. K.Shenbagavalli
(RR4 to 8 brought on record
as LR's of the deceased R1
vide order in CMP 9043/94
dated 21.7.98) .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 21.8.1992 made in A.S.No.105/90 on the file of the Sub Court, Srivilliputhur, confirming the judgment and decree dated 25.1.1990 made in O.S.No.271/81 on the file of the Additional District Munsif Court, Sathur.

!For appellant : Mr.Sivaraman

^For Respondents : Mr.V.C.Rakshitha
for Mr.V.P.Venkat for RR4 to 8

:JUDGMENT

The first defendant, whose defence plea in a suit for specific performance in respect of an immovable property was rejected by both the Courts below, is the appellant herein.

2. The following facts are noticed in the pleadings of the parties:
The properties, described in plain 'A' and 'B' Schedules belonged to the first defendant. When the first defendant was a minor, his mother Lakshmiammal entered into an agreement with the plaintiff on his behalf, on 30.9.1960,

agreeing to sell 'A' Schedule property in consideration of Rs.3,000/-. The mother of the first defendant put the plaintiff in possession of 'A' Schedule property on the date of the agreement; but, the execution of the sale deed was postponed. Subsequently, when the first defendant became major, he rectified the said agreement and acknowledged his obligation to execute the deed of sale in favour of the plaintiff in relation to 'A' Schedule property. The first defendant was also to pay another sum of Rs.7,000/-, and in lieu thereof, he agreed to sell 'B' Schedule property on 7.2.1977. He also put the plaintiff in possession of the said property. The written agreement dated 7.2.77 was marked as Ex.A1. The first defendant acknowledged and confirmed his obligation to execute the sale deed in favour of the plaintiff not only in respect of 'A' Schedule property, but also in respect of 'B' Schedule property. Despite many a demand for the execution of the document, the first defendant was evading. In the meantime, the plaintiff learnt that the first defendant was negotiating for the sale of the suit properties with the second and third defendants. Under such circumstances, there arose a necessity to issue a notice on 29.4.1977 to the defendants, calling upon them to execute the sale deed in respect of 'A' and 'B' Schedule properties, since the consideration for the entire sale has already passed. The first defendant has also duly acknowledged the same in Ex.A1 agreement. The first defendant has caused a reply denying both the agreements. Hence, the instant suit was filed for the relief of specific performance.

3. The contesting defendants resisted the suit by stating that neither the mother of the first defendant nor the first defendant acknowledged the agreement in respect of 'A' Schedule property, nor has the first defendant entered into any agreement, as put forth by the plaintiff, under Ex.A1 on 7.2.1977; that it was a created one, and apart from that, his mother was not empowered to enter into any agreement on his behalf, as he was minor then; that the first defendant was well within his rights to convey the properties in favour of the defendants 2 and 3, and hence, the suit was to be dismissed.

4. The trial Court framed the necessary issues, tried the suit and decreed the same. An appeal filed by the first defendant was also dismissed by the first appellate Court. Hence, this second appeal has been brought forth by the first defendant aggrieved over the judgments of the Courts below.

5. At the time of admission, the following substantial questions of law were formulated by this Court: (1) Whether the lower appellate Court having held that the first respondent herein has not come to the Court with clean hands, is correct in granting the discretionary relief and in confirming the judgment and decree of the trial Court contrary to the dicta laid down in Tamil Nadu Law Notes Journal? (2) Whether the plaintiff who has come to the Court after inordinate delay is entitled to the discretionary relief of specific performance in the absence of any explanation? (3) Whether in law the judgment and decree of the lower appellate Court are illegal and unsustainable when the lower appellate Court failed to follow the points for determination and failed to follow the procedure as contemplated under Order 41 Rule 31 of Civil Procedure Code?

6. This Court paid its full attention on the submissions made by the

Counsel for both the parties.

7. As could be seen from the available materials, it was a suit filed by the first respondent/plaintiff seeking the execution of the sale deed by the defendants in respect of the immovable properties found in 'A' and 'B' Schedules attached to the plaint. It is not in controversy that those properties belonged to the first defendant, and subsequently, they were conveyed to the defendants 2 and 3, and hence, they were added as parties. According to the plaintiff, pending the agreement in his favour, the properties were conveyed by the first defendant to the defendants 2 and 3. The specific case of the plaintiff was that the mother of the first defendant entered into an agreement in respect of 'A' Schedule property on 30.9.1960, agreeing to sell the same to the plaintiff for a consideration of Rs.3,000/- and put the plaintiff in possession the very day, and the defendant, after attaining majority, has acknowledged and affirmed the agreement entered into by his mother with the plaintiff; that the first defendant owed a sum of Rs.7,000/- to the plaintiff; that in consideration thereof, he has executed an agreement for sale in respect of 'B' Schedule property, and thus, under Ex.A1 agreement, he was liable to execute the sale deed, since the entire consideration was received by him. The case of the first defendant was one of denial of the execution of the agreement itself. Both the Courts below have recorded a concurrent finding that Ex.A1 agreement was true and genuine, under which the plaintiff was entitled to get the conveyance of the properties namely 'A' and 'B' Schedules attached to the plaint.

8. A perusal of Ex.A1 agreement would clearly indicate that the earlier agreement between the plaintiff and the first defendant's mother on 30.9.1960 was also referred to therein, and the first defendant has also affirmed the said agreement and has undertaken to execute the sale deed in that regard also. That apart, the first defendant has also agreed to sell 'B' Schedule property for a consideration of Rs.7,000/-, and the document would clearly read that the plaintiff was put in possession at the time of agreement itself. From the available evidence, it would be abundantly clear that the plaintiff was in possession of both 'A' and 'B' Schedule properties. No satisfactory or acceptable explanation is coming from the defendant's side how the plaintiff got into possession of the properties, if such an agreement was not entered into between the parties.

9. The learned Counsel for the appellant would lay emphasis that there were some circumstances, which, according to him, are suspicious, attendant on Ex.A1 agreement, and hence, both the lower Courts should not have granted the relief in favour of the plaintiff. This contention cannot be countenanced for the simple reason that both the Courts have discussed the evidence in extenso and have recorded a concurrent finding. That apart, a perusal of the signature of the first defendant in Ex.A1 would clearly indicate that it was the first defendant, who executed the document. Having executed such a document, affirming the agreement entered into between the plaintiff and the mother of the first defendant and also agreeing to sell 'B' Schedule property also, the first defendant has come forward with a false defence, totally unfounded to his knowledge. It is pertinent to note that apart from the above, a notice was also issued, calling upon the parties to

execute the document, and pending the agreement, the first defendant has also entered into an agreement with second and third defendants. This Court is of the considered view that all these contentions put forth by the appellant's side that there were suspicious circumstances over Ex.A1 agreement cannot be countenanced. This Court is unable to notice any valid defence for the defendants in the said suit. Therefore, nothing is noticed to disturb the concurrent finding recorded by both the Courts.

10. Under the stated circumstances, this second appeal is devoid of merits, and the same is dismissed, confirming the judgments and decrees of the lower Courts and leaving the parties to bear their costs.

Index: yes

Internet: yes

To:

1. The Subordinate Judge Srivilliputhur
2. The Additional District Munsif Sathur
3. The Record Keeper V.R. Section High Court, Madras.

nsv/

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